

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAY - 5 2016

Ernie Martinez #54022-051
FCI Phoenix
37910 N. 45th Ave.
Phoenix, AZ 85086

Movant in pro se

MATTHEW J. DYKMAN

IN THE UNITED STATES DISTRICT COURT CLERK

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

V.

ERNIE MARTINEZ

Case No. 1:09-CR-2619 JB

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW, defendant, Earnie Martinez, pro se, and moves
this Honorable Court for an ORDER appointment of counsel to
represent hm in this case.

In support of this motion, Defendant states:

1. The U.S. Supreme Court in Johnson v. United States 135 S.
Ct. 2251 (2015), declared the residual clause of the Armed Career
Criminal Act (ACCA) unconstitutionally vague. The residual clause
is a catchall section of the ACCA that treats a variety of different
offenses as "crimes of violence". The United States used defendant's
prior convictions as crimes of violence which are no longer considered
crimes of violence pursuant to Johnson.

2. Because the residual clause is unconstitutional, the
defendant who was sentenced as a Career Offender argues that his
sentence is unconstitutional under Johnson.

3. The wording of the ACCA is identical to the "residual
clause" in the Career Offender Guidelines so the defendant also
challenges his sentence based on this factor and the Johnson case.

4. Defendant's imprisonment greatly limits his ability to litigate. These issues involved in this case are complex and will require significant research and investigation. The defendant has limited access to the law library and limited knowledge of the law.

5. Counsel would better enable defendant to present a Johnson claim to the court either in this matter or a 28 U.S.C. 2255 for relief.

6. Defendant's deadline to file is of critical importance that requires the courts immediate attention in order to protect the defendant's rights.

WHEREFORE, defendant requests that this Honorable Court appointment a member of the Public Defender's Office, or CJA pool for relief on this unconstitutional sentence under the ACCA as declared by the Johnson case above, which defendant is currently serving.

Respectfully Submitted,

Ernie Martinez
Ernie Martinez, pro se

CERTIFICATE OF SERVICE

I, Ernie Martinez, hereby declare under penalty of perjury, that I have mailed a true and correct copy of the foregoing motion to the following by first class mail:

United States Attorney's Office

United States Courthouse
333 Lomas Blvd. N.W., Ste. 270
Albuquerque, New Mexico 87102

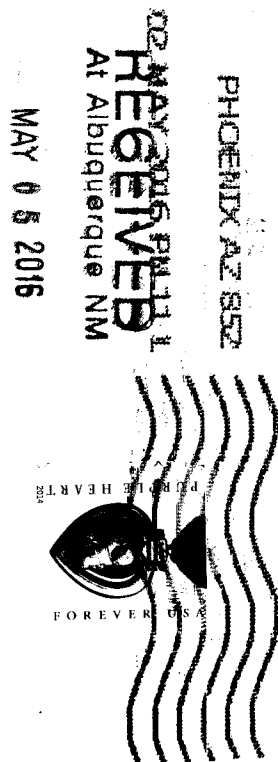
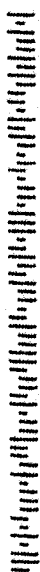
Ernie Martinez
Respectfully Submitted,

ERINIE MARTINEZ #34022-051
Phoenix F.C.I.
37910 N 43th Ave
Phoenix AZ 85054

⇒ 54022-051 ⇒
United States Court Clerk
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MATTHEW J. DYKMAN
U.S. Federal Correctional Institution
Phoenix, Arizona
Inmate Correspondence